

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES,

Plaintiff,

v.

Case No. 2:20-cv-991-JLB-NPM

LIONEL PEQUENO and ALECIA
GALLEGOS,

Defendants.

ORDER

Before the Court is an Application for Entry of Clerk's Default (Doc. 8). Plaintiff the United States of America requests the Court enter a default against Defendants Lionel Pequeno and Alecia Gallegos. (*Id.*, p. 1). No response was filed to the motion and the response time has lapsed. For the reasons discussed below, the Court denies the motion without prejudice.

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a). Before directing the clerk to enter a default, however, the Court must determine whether Plaintiff properly effected service of process, for which Plaintiff bears the burden of proof. Fed. R. Civ. P. 4(l); *Chambers v. Halsted Fin. Servs., LLC*, No. 2:13-CV-809-

FTM-38, 2014 WL 3721209, *1 (M.D. Fla. July 28, 2014); *Zamperla, Inc. v. S.B.F. S.R.L.*, No. 6:13-CV-1811-ORL-37, 2014 WL 1400641, *1 (M.D. Fla. Apr. 10, 2014).

The Affidavits of Service indicate that Lionel Pequeno and Alecia Gallegos were served by substitute service on Mike Pequeno, as co-resident. (Docs. 5, 6). Both Affidavits of Service also indicate that “a true copy of the SUMMONS IN A CIVIL ACTION” were delivered. (Doc. 5, p. 1; Doc. 6, p. 1). While the United States attempted substitute service of process, it fails under Rule 4(e)(2)(B)¹ because the Affidavits of Service indicate only a true copy of the summons was served and does not indicate a complaint was also served. Rule 4(e) requires both to be served.

Accordingly, the Application for Entry of Clerk’s Default (Doc. 8) is **DENIED** without prejudice.

DONE and **ORDERED** in Fort Myers, Florida on April 5, 2021.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE

¹ Rule 4(e)(2)(B) permits service of a summons and complaint by “leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there.”